

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**COB ROLLERS PORK, LLC  
AFO #65376  
Bremer County, Iowa**

ADMINISTRATIVE CONSENT ORDER  
NO. 2015-AFO- 09

TO: Steve Rathe, Registered Agent  
Cob Rollers Pork, LLC  
2560 250<sup>th</sup> Street  
Readlyn, Iowa 50668

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Cob Rollers Pork, LLC (Cob Rollers) for the purpose of resolving violations of Cob Rollers' construction permit. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:   Relating to legal requirements:**

Chris Gelner, Field Office 1  
Iowa Department of Natural Resources  
909 West Main Street, Suite 4  
Manchester, Iowa 52057  
Phone: 563/927-2640

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

Cob Rollers neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Cob Rollers is an animal feeding operation located at 2520 Oakland Avenue, Denver, Iowa (NE ¼ of Section 20, Maxfield Township, Bremer County). The facility consists of two 2,400 head swine finisher confinement buildings with a total of 1,920 animal units. Jeff and Nancy Folkman are listed as owners on the facility' manure management plan; however the Bremer County Assessor's Office lists Cob Rollers as the owner of the facility.
2. On July 7, 2008, DNR issued Construction Permit #CP-A2008-136 to Cob Rollers for the construction and operation of the facility. Two of the requirements listed in the construction permit include the following: 1) the manure produced at this confinement operation shall be injected or incorporated on the same date it is land applied and 2) a separation distance of an additional 200 feet above the minimum requirement of 750 feet shall be maintained during the injection or same-date incorporation of manure to the closest public use area.
3. On December 8, 2014, DNR Field Office 1 received a complaint stating that manure from Cob Rollers had been applied between December 3-4, 2014 to fields in Sections 18 and 19 of Maxfield Township, Bremer County, and the proper separation distances had not been met from four residences and a church.
4. On December 9, 2014, Chris Gelner, DNR Field Office 1 environmental specialist, investigated the complaint and found that the surface application of liquid manure had recently occurred in both Section 18 and Section 19. Mr. Gelner determined that the application was done in violation of separation distance requirements from five residences (126 feet, 135 feet, 130 feet, 300 feet, and 645 feet), one church (135 feet), one public use area (cemetery) (240 feet), two water sources (45 feet and <50 feet) and at least one drinking well (<50 feet). The manure had not been incorporated.
5. Mr. Gelner went to the Cob Rollers facility and spoke to Nancy Folkman who stated Mr. Gelner should speak to Steve Rathe, who handles all manure management. Ms. Folkman stated that Dan Goebel with Goebel Pumping Services, L.C. (Goebel Pumping) had done the manure application and she was under the impression that the manure had been incorporated.
6. Mr. Gelner attempted to contact Mr. Goebel but was unable to talk to Mr. Goebel. On December 9, 2014, Mr. Gelner contacted Mr. Rathe and explained

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the violations discovered during the investigation. Mr. Rathe stated the facility needed to get rid of the manure and that the ground was too hard to incorporate. Mr. Gelner advised Mr. Rathe to incorporate the manure as the temperatures were forecasted to be in the 50s the next couple of days. Mr. Rathe later left a message for Mr. Gelner stating the facility may be able to work the manure into the soil.

7. On December 17, 2014, Mr. Gelner contacted Mr. Rathe to determine if the incorporation had occurred. Mr. Rathe stated the ground was hard and that he had been out of town for a couple of days. Mr. Gelner asked if an attempt was made to incorporate the manure and Mr. Rathe said no. Mr. Rathe called the field office later in the day and said an attempt would be made to incorporate the manure into the soil.

8. On December 18, 2014, a Notice of Violation letter was issued to Cob Rollers for the violations discovered by the field office. The letter stated the matter was being referred for further enforcement.

#### IV. CONCLUSIONS OF LAW

Cob Rollers neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. 567 IAC 65.7(10) states that a person who constructs, modifies or expands a confinement feeding operation structure pursuant to a construction permit shall comply with all terms and conditions of the construction permit. Section 7 of Construction Permit #CP-A2008-136 issued to Cob Rollers states the following:

The Master Matrix evaluation of your application by Bremer County dated April 7, 2008, includes scores for criteria 26"e", 29, 31, and 35. The Master Matrix requires that the limitations or actions you accepted in choosing to receive score for this criterion must be included as a condition of the Permit. Accordingly, in operating this facility you are required to comply with Master Matrix criteria 26"e", 29, 31, and 35. Briefly stated:

- a) The manure produced at this confinement operation shall be injected or incorporated on same date it is land applied (criterion 26"e")

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c) A separation distance of an additional 200 feet above the minimum requirement of 750 feet shall be maintained during the injection or same-date incorporation of manure to the closest public use area (criterion 31).

During the inspection in December 2014, DNR Field Office 1 personnel noted that manure from the Cob Roller facility had not been incorporated and had been applied within the additional 200 feet above the minimum requirement of 750 feet of a public use area (cemetery). The above-facts indicate violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Cob Rollers agrees to do the following:

1. Cob Rollers shall pay an administrative penalty in the amount of \$3,500.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,500.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Cob Rollers gained an economic benefit by delaying the costs associated with incorporating manure. Based on the above-factors, \$250.00 is being assessed for this factor.

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Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Cob Rollers has the duty to comply with its construction permit and to ensure that the provisions of the construction permit are followed. The potential for a water quality violation resulted from the manure not being incorporated at the time of application. These violations threaten the integrity of the water quality program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Cob Rollers has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Cob Rollers chose to take points on the Master Matric for incorporating the manure and for not applying within an additional 200 feet above the minimum requirement of 750 feet of a public use area and then failed to ensure the manure application complied with the construction permit requirements. Additionally, Mr. Gelner instructed Mr. Rathe to incorporate the manure but Cob Rollers failed to even attempt incorporation until two weeks later. Therefore, \$1,750.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Cob Rollers. For that reason Cob Rollers waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Chuck Gipp  
CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 31<sup>st</sup> day of  
March, 2015.

Cob Rollers Pork LLC  
Cob Rollers Pork, LLC

Dated this 25<sup>th</sup> day of  
March, 2015.

Kelli Book, Field Office #1, EPA, VIII.D.2.b